

EXHIBIT V

Redrafted Declaration of Kathleen T. Zellner
In Support of Plaintiff's Redrafted Responses to
Defendants' Renewed/Second Motions for Summary Judgment
(C11-5424BHS)

REPORT OF REBECCA J. ROE

I am licensed to practice law in the State of Washington and have been so licensed since 1977. I obtained my Bachelor of Arts Degree from the University of Washington in 1973. I attended Seattle University School of Law and obtained my Juris Doctorate Degree in 1977. I am presently a principal in the law firm of Schroeter, Goldmark, and Bender located in Seattle, Washington. I have been engaged in the private practice of law with the firm of Schroeter, Goldmark, and Bender since 1994. My practice now consists almost exclusively of representing plaintiffs in personal injury cases, employment cases, and other claims in which damages are sought.

Between 1977 and 1994 I was employed as a Deputy Prosecuting Attorney for King County. I was one of three Deputy Prosecutors that formed the Special Assault Unit in 1979. (The Honorable Robert S. Lasnik was one of the others.) The Unit was responsible for prosecuting child sexual abuse cases. A foundation for the Unit was the "joint interview." The "joint interview" meant a deputy prosecutor and detective would jointly interview child victims to determine whether the child gave a credible report of abuse and was competent to testify. Other purposes were to build rapport between the child and the prosecutor in the event the case was filed and going to trial.

I have personally prosecuted hundreds of child sex abuse cases and have interviewed hundreds of child victims as part of my prosecution of these cases.

I was the supervising Senior Deputy Prosecutor of the Special Assault Unit for King County between 1981 and 1994. My duties in that position included supervision of up to 12 deputy prosecuting attorneys in that unit which was responsible for the prosecution of all sex crimes and all crimes against children including child rape cases and cases of physical abuse

It is my opinion that the reports of Detective Krause dated March 7, 21, and 25, 1985, which reported her later interviews with Matthew Spencer and Kathryn Spencer were further evidence which, if believed by jurors, would support a finding by a jury that Mr. Spencer was guilty of the rape of his two children and stepson. There was nothing in any of these reports or the earlier reports of Detective Krause which would lead a reasonable prosecuting attorney to believe that Mr. Spencer was innocent of the charges which were filed against him or that the allegations contained in the reports were fabricated or the result of coercion.

The video recording of the interview of Mr. Peters' December 11, 1984 interview of Kathryn Spencer prior to the filing of the original information also did not contain evidence that Mr. Spencer was innocent of the charges which were filed against him two weeks later. Although the investigation of a child abuse victim's allegations are done by law enforcement officers as it was in this case, in King County we had a protocol for a joint interview of the child prior to making a charging decision. The purpose of the joint interview was to evaluate the child's competence as a witness, evaluate the credibility of the child, and assess the likelihood the child would be able to repeat in court the allegations that he or she had previously made to law enforcement officers. The interview conducted by James Peters on December 11, 1984 was typical of this type of interview. Kathryn's demeanor, which initially included a reluctance to talk about the events, was also typical of many young victims of sexual abuse who are reluctant to report allegations. There are many reasons children are reluctant to talk about abuse. They are often told by their abusers not to tell anyone about the abuse. Children are often embarrassed to talk about what happened. They frequently feel guilty or ashamed and believe they are somehow at fault or did something wrong. When the perpetrator is a person of authority in the child's life, as clearly a parent would be, there are often great pressures upon the child not to

disclose because the parent is often someone they love, despite the abuse. More often than not, children were reluctant for one reason or the other. This makes further questioning necessary even if a child initially does not disclose at the beginning of an interview.

I have received the report of plaintiff's liability expert William Bernet M.D. and disagree with many of his opinions, expressed as conclusions, concerning the December 11, 1984 interview. Contrary to Dr. Bernet's statements, there were no major inconsistencies in Kathryn's narrative concerning the abuse once she began to speak about it. She remained consistent that the abuse took place in the living room at the "house by the river." She reported her father as perpetrator of the abuse even when given other choices by Mr. Peters. Dr. Bernet criticizes the presence of Kathryn's mother during the interview. While not our preference, this was a common practice at the time. He criticizes the use of anatomically correct dolls. The use of dolls was accepted practice at the time. He criticizes the fact that the tape was turned off while the parties took a break at one point during the interview. In my experience it is not unusual for breaks to occur prior to the completion of a child interview since a child's attention span and ability to focus is much less than an adult's requiring more frequent breaks.

In my opinion this interview was not exculpatory and was not evidence of innocence on the part of Mr. Spencer. Although it would have been produced in discovery prior to Kathryn's testimony if charges were filed, established legal precedent in 1984 and 1985 did not require that it be disclosed at the time that charges were filed. The timing of the disclosure often varied at this time from county to county. In my opinion, given the standard of practice in December of 1984 nothing in this interview was so coercive or abusive that it would lead a reasonable prosecutor to know that the techniques used would yield false information.

My rate of compensation for records review and other matters relating to serving as an expert witness in this case is \$300 per hour.

Dated November 7 2012

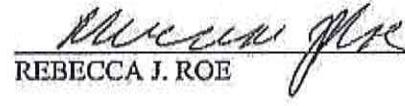

REBECCA J. ROE

EXHIBIT W

Redrafted Declaration of Kathleen T. Zellner
In Support of Plaintiff's Redrafted Responses to
Defendants' Renewed/Second Motions for Summary Judgment
(C11-5424BHS)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER and KATHRYN E. TETZ,)
Plaintiffs,)
vs.) No. 11-cv-05424-BHS
FORMER DEPUTY PROSECUTING)
ATTORNEY FOR CLARK COUNTY JAMES)
M. PETERS, DETECTIVE SHARON)
KRAUSE and SERGEANT MICHAEL)
DAVIDSON,)
Defendants.)

VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION
OF
ARTHUR DAVID CURTIS

DATE TAKEN: December 10, 2012
TIME: 9:00 a.m.
PLACE: 613 W. 11th Street
Vancouver, Washington

COURT REPORTER: Teresa L. Rider, CRR, RPR, CCR

Rider & Associates, Inc.

360.693.4111

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1 Q. Do you know -- I'm sorry. I cut you off. You
2 said no.

3 A. No, I don't know if that happened. No meaning
4 that I don't know if that occurred or not, no.

5 Q. Do you know if Shirley Spencer was polygraphed?

6 A. No, I don't know.

7 Q. Do you know or did you become aware that
8 Shirley Spencer had been abused, sexually abused, as a
9 child?

10 A. No, I did not know that.

11 Q. Are you aware that the Washington Supreme Court
12 has actually ruled, at least in one case, that a witness
13 reporting abuse who's also been a sex abuse victim
14 themselves is not reliable?

15 MR. FREIMUND: Object to the form.

16 You can still answer, though, sir.

17 THE WITNESS: I'm not aware of that case.

18 BY MS. ZELLNER:

19 Q. When you made the assignment to Mr. Peters,
20 explain to me what that assignment entailed. What were
21 his duties when you made the assignment?

22 A. To evaluate the case to see whether there was
23 sufficient evidence for us to charge.

24 Q. And did Mr. Peters report back to you that
25 there was sufficient evidence for you to charge?

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1 A. Yes.

2 Q. Did Mr. Peters - and we're just talking about
3 the first arrest - did Mr. Peters ever report to you
4 that he did not think that the case should be charged?

5 A. Not that I recall.

6 Q. Did you rely on Mr. Peters' evaluation of the
7 sufficiency of the evidence to charge the case?

8 A. Yes.

9 Q. And I'm assuming that you didn't conduct an
10 independent evaluation of the legal sufficiency of the
11 evidence yourself, did you?

12 A. Well, I discussed the -- yes, I did. I
13 discussed the -- what Mr. Peters had determined in his
14 interview that he conducted with Katie prior to filing
15 the charge.

16 Q. And is that -- which interview are you
17 referring to?

18 A. I don't know what interview it was. But as I
19 recall, he interviewed the girl and we filed the charge
20 -- I filed the charge.

21 Q. Right. Are you referring to the videotaped
22 interview that was done December 11th, 1984?

23 A. I don't know if it was the videotaped interview
24 or whether it was a separate interview. I just know
25 that he had interviewed her.

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1 Q. And tell me, if you can, what did Mr. Peters
2 tell you about his interview of Katie Spencer that
3 convinced you that charges should be filed.

4 A. Well, as I recall, he told me that he had
5 interviewed her about the allegations, that she appeared
6 to him to be competent, that she would stand up under
7 scrutiny on the witness stand. He thought he could use
8 her as a witness, and that she was believable in her
9 allegations against Mr. Spencer.

10 Q. So he told you that she was competent and she
11 was also credible. Would that be a fair statement?

12 A. Yes. In his opinion, yes.

13 Q. And is it also a fair statement that you relied
14 exclusively upon that opinion to file the charges?

15 MS. FETTERLY: Object as to form.

16 BY MS. ZELLNER:

17 Q. You can answer.

18 A. I can't say exclusively because I probably
19 conversed with Sharon Krause, as well.

20 Q. So assuming that you talked to Sharon Krause
21 also about the allegations, would it be a fair statement
22 to say that based upon what Sharon Krause told you and
23 what Jim Peters told you that you decided then to file
24 the charges?

25 A. I probably would have read the police reports,

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1 as well. So it would have been a combination of those
2 three factors: of my personal review of the police
3 reports and the allegations contained therein, my
4 conversation with Sharon Krause as to her assessment of
5 the victim and Jim Peters' input as to his assessment,
6 as well. It was probably a combination of those three
7 things.

8 Q. Of those three things, did any of those three
9 things have more weight than the others with you in
10 making that decision?

11 A. No, because it was all pretty -- as I recall,
12 it was all pretty consistent. Everybody was basically
13 concluding the same thing.

14 Q. Do you know if prior to making the charging
15 decision, other than the police reports, did you ever
16 look at or review a videotape that was made December
17 11th, 1984, of Jim Peters' interview with Katie Spencer?

18 A. I don't believe that I reviewed that tape, no.

19 Q. Do you know if prior to filing the charges on
20 January 3rd, had you been informed that there was a
21 videotape?

22 A. Not that I recall.

23 Q. And would you expect one of your deputy
24 prosecutors, if they had videotaped the interview with
25 the child, a child witness in a sex abuse case, to have

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1 informed you of that?

2 A. Not necessarily, but I can't say it -- that's
3 all I can say. Not necessarily.

4 Q. If you had been informed that there was a
5 videotape of the child, would you have wanted to have
6 reviewed the videotape before making the charging
7 decision?

8 A. I may have.

9 Q. We'll come back to the videotape. But were you
10 at some time made aware that a videotape of Katie
11 Spencer had been made?

12 A. Yes.

13 Q. Do you remember when you learned that there was
14 a videotape that had been made?

15 A. Well, from what I can recall, I don't remember
16 anything about a videotape until fairly -- well, fairly
17 recently in the scheme of the time of this case. It was
18 after he was released from prison and the post-release
19 issues were occurring.

20 Q. And just for point of reference, that was in
21 2009. After you learned that there had been a videotape
22 made, have you ever reviewed that videotape up until
23 today?

24 A. Yes. My recollection is that that was the
25 first that I knew of the videotape. And when I became

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1 aware of its existence, I wanted to review it
2 personally, which I did.

3 Q. And you probably reviewed it in 2009 or '10,
4 somewhere in that time frame?

5 A. Thereabouts, right.

6 Q. When you reviewed the videotape, had you been
7 provided with an official court transcript or court
8 reporter transcript of the video?

9 A. I don't believe so. I believe I just reviewed
10 it in the office next to my office on a TV. I plugged
11 the video in and I just looked at it. I don't recall a
12 transcript being attached to it.

13 Q. So if we go back to -- and we'll come back to
14 the videotape -- but if we go back to the January
15 charging decision, would you characterize from that
16 point forward your involvement in the Spencer case as
17 actively involved, were you actively involved in the
18 case?

19 A. The case was assigned to Mr. Peters, and I
20 would say I was active in an oversight capacity.

21 Because he was a Vancouver police officer, it was deemed
22 to be a quote, unquote, high profile case, and part of
23 my office guidelines was to keep me informed. Part of
24 my office guideline was to keep me informed on all high
25 profile cases.

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1 Q. She also notes that on page 5 of Shirley's
2 handwritten statement, she says, where child talked
3 about rubbing Shirley, and she comments, it creates
4 questions about fact versus fantasy. I believe this
5 point is a built-in reasonable doubt.

6 Were you aware that when she's describing
7 Shirley's letter, that there's actually an entry on page
8 5 where Katie Spencer talked about rubbing Shirley?
9 Were you aware of that statement that Katie had made?

10 A. I don't recall.

11 Q. When Rebecca Roe's report came in, I'm sure
12 that you reviewed it carefully, correct?

13 A. If I had the report, I would have reviewed it.
14 I don't have independent recollection of reviewing it.

15 Q. Is it possible that, perhaps, the report went
16 to someone else other than you, like, maybe it went to
17 Mr. Peters?

18 A. Oh, it would have gone to the assigned deputy,
19 yeah. This report would not -- probably would not have
20 come to me directly.

21 Q. So it's possible that maybe you didn't see the
22 report before you made the charging decision in January?

23 A. Well, I don't have any independent recollection
24 of reviewing the report, so I guess to answer your
25 question, yeah, it's possible.

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1 A. It wouldn't be uncommon.

2 Q. This is something that -- not this particular
3 report, but you've seen this type of documentation from
4 the sheriff's office to your office saying we're
5 referring the case to you.

6 A. Yeah, it's kind of a red flag to us that we
7 don't intend to do anything more unless there's a
8 follow-up request by the prosecutor.

9 Q. So is it a correct statement that the charging
10 decision that was made was based upon the police
11 reports, sounds like the Shirley Spencer letter,
12 possibly Rebecca Roe's report, but certainly an
13 interview that Jim Peters did with Katie Spencer, would
14 that be fair? Is that everything that made up the
15 probable cause to charge?

16 A. It would be whatever was in the police report
17 in conjunction with Mr. Peters' interview, of Katie,
18 which would have been a crucial piece of evidence, in
19 conjunction with -- yes, if Shirley Spencer's letter was
20 in the file and part of the police report, then that
21 would have been part of the review.

22 Q. And if we look at Exhibit 3, it's the
23 information that was filed. Could you just identify
24 that document and your signature?

25 MR. FREIMUND: When you get a chance, could we

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1 Q. And after the interview when Mr. Peters advised
2 you, he advised you, did he not, that the case was
3 viable and it should be filed?

4 A. I think he expressed the reservations about the
5 girl and whether or not she could withstand scrutiny,
6 but I believe he concluded that she was, like I said
7 earlier, she was competent, although barely, and would
8 be able to testify truthfully as to what had occurred.

9 Q. You would agree that competency is really a
10 different determination than credibility, would you not?

11 A. Correct.

12 Q. But Mr. Peters had informed you that he
13 believed that she was competent, I think you said
14 barely, and that I'm assuming that she also was credible
15 in her allegations.

16 A. Yes. Competency is a threshold determination
17 that has to be made by the judge prior to trial. He
18 could have found her credible but not competent.

19 Q. Right. And typically in a competency
20 evaluation, questions about the abuse itself are not
21 even asked; isn't that right? The questions are about
22 whether the child knows their birthday and where they
23 live and their ABCs and things like that, wouldn't you
24 agree?

25 A. Yes.

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1 Q. Right. And, actually, you are aware that Brady
2 disclosures have to be made regardless of whether
3 there's a trial or not. Are you aware of that?

4 MR. FREIMUND: Object to the form.

5 You may answer.

6 THE WITNESS: Brady is a continuing obligation
7 on the part of the prosecution, yes.

8 BY MS. ZELLNER:

9 Q. And do you have any knowledge as to whether or
10 not your office ever produced the videotaped statement
11 of Katie Spencer that was made on December 11th, 1984,
12 to the defense prior to Mr. Spencer's guilty plea?

13 A. I don't have any personal knowledge of that.
14 And I'd like to also clarify my prior answer where I
15 said there usually was a continuing obligation on both
16 sides to produce evidence. If you look at the last page
17 of the omnibus application, it says: All information
18 promised to be supplied in the future will be provided
19 ten days before trial. That was the specific agreement
20 in this case.

21 Q. Right. And this case was actually first set
22 for trial on February 27th, 1985, correct, then it was
23 continued? But the original trial date on the Spencer
24 case was February 27th, 1985, right?

25 A. I don't recall.

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1 Q. Are you aware that the case was continued a
2 couple of times?

3 A. I don't have specific recollection of that, no.
4 It wouldn't surprise me because most of these cases got
5 continued past the first trial date.

6 Q. Sure. So actually, the statement that you read
7 that it was to be provided in advance of the trial, ten
8 days before trial, that would apply to the trial date
9 that was pending at the time that this motion was made,
10 right?

11 MS. FETTERLY: Object as to form.

12 BY MS. ZELLNER:

13 Q. Whatever the trial date was, the disclosures
14 had to be made ten days in advance; is that right?

15 A. That's the specific agreement here, correct.

16 Q. Right. So if the trial date was February 27th,
17 1985, the disclosures had to be made by February 17th,
18 1985, correct?

19 MS. FETTERLY: Object as to form.

20 THE WITNESS: Yes, unless the parties knew that
21 there was going to be a continuance, which I don't know
22 if that -- there's a lot of informal discussion that
23 goes on between the attorneys on trial dates. Defense
24 might have said I'm going to ask for a continuance and
25 Mr. Peters might have said, fine, I won't oppose it,

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1 because that's pretty normal course of action.

2 BY MS. ZELLNER:

3 Q. But there's no question that all of Katie
4 Spencer's statements had to be produced within ten days
5 of the trial date; is that correct?

6 MS. FETTERLY: Object as to form. It says
7 witnesses.

8 BY MS. ZELLNER:

9 Q. Isn't that what you just read to us?

10 A. No. It says ten days before trial, meaning the
11 actual trial, not the trial date.

12 Q. You think that's the Brady disclosure
13 requirement, regardless of what this document says?

14 MS. FETTERLY: Object as to form. You're
15 talking about two different things, statement of
16 witnesses or Brady information.

17 MS. ZELLNER: I'm just asking him his
18 understanding of Brady.

19 BY MS. ZELLNER:

20 Q. If your disclosure requirements were limited to
21 whether or not the case went to trial --

22 A. Brady is a continuing obligation.

23 Q. -- regardless --

24 A. In other words, you can't hold on to -- you
25 don't hold off Brady information that you have in your

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1 possession and wait ten days before trial.

2 Q. Right. We're in agreement.

3 You would agree that the videotape which you
4 found out about in apparently 2009 and was made December
5 11th, 1984, had to be disclosed prior to the guilty plea
6 of Ray Spencer.

7 MR. VELJACIC: Object to form.

8 THE WITNESS: There was a discussion that
9 occurred after I became aware of that tape as to whether
10 or not it was Brady evidence. And I made the decision
11 to disclose it because I said something to the effect
12 I'm not going to split that hair.

13 BY MS. ZELLNER:

14 Q. Tell me about when that decision was made. Was
15 that made in 2009?

16 A. Yes.

17 Q. So you find out, I'm assuming for the first
18 time, that the video has been discovered by Sharon
19 Krause in her garage.

20 A. That was my understanding, yes.

21 Q. How are you informed of that information? Who
22 informed you?

23 A. My recollection is that she sent the tape with
24 a letter to my chief criminal deputy, Dennis Hunter - it
25 might have been Mike Kinnie, but I thought it was Dennis

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1 Hunter - and then thereafter, Mr. Hunter informed me of
2 the existence of the tape.

3 Q. Were you still the Clark County prosecutor at
4 the time that the tape was discovered in 2009?

5 A. Yes.

6 Q. And I'm assuming that you reviewed, then, the
7 tape, is that right, the video?

8 A. Yes.

9 Q. And then who did you instruct that it should be
10 disclosed?

11 A. Mr. Hunter and/or Mr. Kinnie.

12 Q. And tell me just the thought process leading up
13 to your decision to disclose it.

14 A. Well, when I reviewed the tape, I did not see
15 it as being Brady evidence myself. But I also, in
16 reviewing it, saw that the defense could take the
17 position that it was Brady evidence. And that's why
18 when we had the discussion about whether or not it
19 needed to be disclosed, I said I'm not going to split
20 that hair because I could see it from both sides.

21 Q. Right. And so then you ordered -- was it Mr.
22 Hunter, to disclose the video?

23 A. That's my recollection.

24 Q. And that occurred, I think, sometime in 2009.

25 A. It would have been shortly after it was

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1 provided to Mr. Hunter, within a few days.

2 Q. At the time you made that decision to disclose
3 the video, did you have any conversation with Jim Peters
4 prior to your decision to disclose the video?

5 A. I'm 99 percent sure my answer to that is no.

6 Q. When did Mr. Peters leave the Clark County
7 prosecutor's office, if you remember?

8 A. I'm sorry. I could tell you the circumstances
9 under which he left, but I can't tell you exactly what
10 it was.

11 I would say it was shortly before we opened our
12 Child Abuse Intervention Center in 19 -- I'd say it was
13 around 1990 -- '89 or '90, something like that.

14 Q. That's the center that they named after you,
15 right?

16 A. Yes. It's called the Children's Justice Center
17 now, but it was the CHILD ABUSE INTERVENTION CENTER.

18 Q. Tell me, what were the circumstances of Mr.
19 Peters leaving your office.

20 A. I granted him a one-year leave of absence to go
21 back to be the second attorney at the National Center
22 For Child Abuse with the understanding that he was going
23 to come back after that one year and help us set up a
24 child abuse intervention center. And that's why I'm
25 saying I don't know the exact year, but it was around

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1 again, right?

2 A. Well, at this point, I may or may not have. It
3 may have already been assigned to Mr. Peters, and he may
4 have independently reviewed it and just told me what had
5 occurred.

6 Q. And this time, there's nothing sent out, like
7 to Rebecca Roe, I'm assuming, because Mr. Peters had
8 been discharged from the Vancouver Police Department.

9 MR. FREIMUND: I object to the form. I think
10 you misstated, Ms. Zellner.

11 MS. ZELLNER: I'm sorry. I said Peters.

12 BY MS. ZELLNER:

13 Q. By the time we get to February, has the
14 potential problem with the Vancouver Police Department
15 resolved itself because Mr. Spencer was discharged?

16 A. My recollection is that we ended up taking the
17 case back because -- partially because of that factor,
18 yes.

19 Q. And then you're describing that with the second
20 information that's filed in February, that you may have
21 had less direct involvement in looking at the underlying
22 evidence. Is that fair, is that what you remember?

23 A. I remember being provided with information
24 regarding his re-arrest and the fact that there were two
25 additional victims and at that point becoming, I

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1 wouldn't say relieved, but more happy with my original
2 filing decision because the case obviously became a lot
3 stronger.

4 Q. Because you had these other alleged victims
5 that helped to corroborate Katie Spencer's allegations,
6 right?

7 A. Yes, correct.

8 Q. Okay. And, again, would you have --

9 A. If I could finish my answer, then.

10 Q. Oh, of course.

11 A. Not only did they corroborate or give
12 credibility to Katie's allegations but provided new
13 allegations as to sexual abuse that occurred on both of
14 them separately as victims. So we now had three
15 victims, not just two boys corroborating one victim, we
16 had three separate victims.

17 Q. And so would it be a fair statement to say that
18 you relied upon Mr. Peters in making your decision to
19 file this second information with the new charges?

20 A. Well, I didn't file the amended information.
21 But it's fair to say that Mr. Peters filed the
22 information, the amended information, adding in the new
23 victims, based on the information he received in the
24 police reports, correct.

25 Q. And he kept you apprised of the developments,

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1 You may answer.

2 THE WITNESS: Assuming that he was talking
3 about confidential communications, yes.

4 BY MS. ZELLNER:

5 Q. One question I should have asked previously,
6 when your office sent the file to Rebecca Roe, did you
7 obtain a release of information from Katie Spencer's
8 mother, DeAnne Spencer?

9 A. You mean a release of information, meaning that
10 is it okay with you if we send the case up to King
11 County?

12 Q. Correct.

13 A. No, that would not normally be something that
14 would be done.

15 Q. So with a child sex abuse case, a file could be
16 sent from one prosecutor to another without getting a
17 release of information from a parent of the child?

18 A. Yes.

19 Q. Let's look at Exhibit 10. When did you first
20 learn that there had been medical exams done of Kathryn
21 Spencer and Matthew Hansen? Was it later in the time,
22 like, was it in the '90s?

23 A. It would have been after July 1, 1992.

24 Q. And how were you informed that there had been
25 medical exams done?

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1 that Exhibit 6 and 7 is correspondence between you and
2 Norm Malang, the King County prosecutor, that is dated
3 -- is that January 5th, 1985?

4 A. I can't tell if that's January 5th or -- looks
5 almost like a 9th.

6 Q. Okay. 9th. And then there's a letter to
7 Rebecca Roe dated January 9, 1985.

8 A. Right.

9 Q. These documents are basically thanking Mr.
10 Malang for providing a special prosecutor, namely Ms.
11 Roe in this case, correct?

12 A. Yes.

13 Q. In reviewing these documents, and I think there
14 were some other testimony, that Mr. Peters expressed
15 some reluctance to proceed or saw some problems about
16 proceeding to file charges in January of 1985. Does
17 that refresh your recollection as to whether or not you
18 likely reviewed Exhibit 1, Ms. Roe's report, prior to
19 filing the initial charges?

20 A. Yes. We specifically asked Ms. Roe to review
21 the case for us. And I would find it hard to believe
22 that we would ask her to review a case and then not
23 review her -- review this letter which incorporates her
24 opinions and rationale. It wouldn't make any sense to
25 me that I wouldn't have reviewed the letter. But I

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1 don't have any independent recollection 26 years later
2 of having done so.

3 Q. But do you believe in reviewing the subsequent
4 documents that it's likely you did?

5 A. Yes.

6 Q. Now, handing you what's been marked as Exhibit
7 27, can you identify that, please?

8 A. This is a document that I prepared. In the old
9 days, we would have yellow pads that we would use to
10 write out contents of informations. I put at the top D,
11 which is defendant, Clyde Ray Spencer, and then Count 1,
12 Count 2, Stat Rape 1, and Indecent Liberties, Count 2.

13 I asked my secretary to provide or to compare
14 the information alleging the dates of -- on one or more
15 occasion between July 18, 1984, and August 26th, 1984,
16 and see if CCSofW - which is County of Clark, State of
17 Washington - and then I listed the victim as Kathryn E.
18 Spencer who was five years of age at the time. Count
19 No. 2, Indecent Liberties, I cited the pertinent part of
20 the statute. There's a 1(a) and 1(b), which was being
21 charged under 1(b), same dates.

22 And at the bottom appears shorthand from my
23 long-time secretary, Carol Axford, which I don't read
24 shorthand so I don't know what it says, other than she
25 was -- I probably asked her to docket it for the next

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1 defense.

2 Q. And in your experience, does that type of
3 expert testimony, meaning that the prosecutor calls,
4 alleviate that doubt?

5 A. Yes. We've had many cases where that's
6 alleviated the doubt and the defendant has been
7 convicted.

8 MS. FETTERLY: Let me look through my notes for
9 a minute. I don't think I have any further questions.
10 I have no further questions.

11 MR. VELJACIC: I have no questions.

12 MS. ZELLNER: I have just a couple to clarify.

13
14 EXAMINATION

15 BY MS. ZELLNER:

16 Q. I just want to make sure that it's clear on the
17 record. Do you recall prior to making the January
18 charging decision, January of '85 charging decision
19 against Ray Spencer, that you did, in fact, review
20 Rebecca Roe's report?

21 A. I do not specifically remember reviewing the
22 report. What I said was that if I asked her for an
23 opinion as to whether or not the case should be filed,
24 it would be very unusual to not review the report after
25 the specific request.

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1 Q. Right. But you don't have a distinct
2 recollection of actually doing that?

3 A. No, I do not.

4 Q. Correct?

5 A. That's correct.

6 Q. And isn't it true in Rebecca Roe's report, that
7 she said one of the problems with the information she
8 looked at was that Katie Spencer was reluctant to talk
9 about these allegations; is that right?

10 A. That's correct.

11 Q. Did you, in the course of cases that Sharon
12 Krause worked on, did you ever just present Sharon
13 Krause's reports to obtain a conviction without anything
14 else, without the child testifying?

15 A. You're saying using the Child Hearsay statute
16 evidence and presenting Sharon Krause as a witness
17 without bringing the victim in?

18 Q. Correct. Do you remember any case that you can
19 give me the name of?

20 A. I'm sorry. I don't. I can't tell you off the
21 top of my head.

22 Q. And having looked at Rebecca Roe's report, you
23 would agree with me that one of her problems with the
24 case is that she thinks that Katie Spencer's prior
25 reports both to Sharon Krause and to Shirley Spencer are

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1 CERTIFICATE
2
3

4 STATE OF WASHINGTON)
5) ss.
6 County of Clark)
7

8 I, the undersigned Washington Certified Court
9 Reporter, pursuant to RCW 5.28.010 authorized to
10 administer oaths and affirmations in and for the State
11 of Washington, do hereby certify:

12 That the annexed and foregoing deposition
13 consisting of Pages 5 through 106 of the testimony of
14 each witness named herein was taken stenographically
15 before me and reduced to a typed format under my
16 direction;

17 I further certify that according to CR 30(e)
18 the witness was given the opportunity to examine, read
19 and sign the deposition after the same was transcribed,
20 unless indicated in the record that the review was
21 waived;

22 I further certify that all objections made at
23 the time of said examination to my qualifications or the
24 manner of taking the deposition or to the conduct of any
25 party have been noted by me upon each said deposition;

26 I further certify that I am not a relative or
27 employee of any such attorney or counsel, and that I am
28 not financially interested in the said action or the
29 outcome thereof;

30 I further certify that each witness before
31 examination was by me duly sworn to testify the truth,
32 the whole truth and nothing but the truth;

33 I further certify that the deposition, as
34 transcribed, is a full, true and correct transcript of
35 the testimony, including questions and answers, and all
36 objections, motions and exceptions of counsel made and
37 taken at the time of the foregoing examination and was
38 prepared pursuant to Washington Administrative Code
39 308-14-135, the transcript preparation format guideline;

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1 I further certify that I am sealing the
2 deposition in an envelope with the title of the above
3 cause and the name of the witness visible, and I am
4 delivering the same to the appropriate authority;

5 I further advise you that as a matter of firm
6 policy, the Stenographic notes of this transcript will
7 be destroyed three years from the date appearing on this
8 Certificate unless notice is received otherwise from any
9 party or counsel hereto on or before said date;

10 IN WITNESS WHEREOF, I have hereunto set my hand
11 and affixed my Washington State CCR Seal this 14th day
12 of December 2012.

13 Certified Court Reporter No. 2119
14 in and for the State of Washington
15 residing at Vancouver, Washington
16 My CCR certification
17 Expires 12-03-13

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